

NTSB Order No.
EM-34

UNITED STATES OF AMERICA
NATIONAL TRANSPORTATION SAFETY BOARD
WASHINGTON, D. C.

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D. C.
on the 29th day of May 1974.

CHESTER R. BENDER, Commandant, United States Coast Guard,

vs.

JOHN THOMAS, Appellant.

Docket ME-37

OPINION AND ORDER

The appellant, John Thomas, has appealed from the decision of the Commandant affirming the revocation of his license (No. 405740) and merchant mariner's document (No. Z-520775) for professional and mental incompetence.¹ In the prior action, appellant brought an appeal to the Commandant (Appeal No. 1970) from the initial decision of Administrative Law Judge Tilden H. Edwards,² issued at the conclusion of the hearing in this proceeding, held at San Francisco, California. The statutory authority for imposing the sanction for incompetence is contained in 46 U.S.C. 239(g).

At the hearing, appellant was represented by professional counsel until after the enter case-in-chief was presented by the Coast Guard. Thereafter, counsel was permitted to withdraw, on his own motion, upon grounds that appellant had absented himself to the New York City area and was no longer communicating with him. Throughout these administrative appeals, appellant has acted without counsel.

¹The appeal to this Board is authorized by 46 U.S.C. 1654(b)(2)9 Rules of procedure governing the conduct of such appeals are set forth in 14 CFR 425.

²Copies of the decisions of the Commandant and the law judge (then acting as "hearing examiner") are attached hereto. The title of hearing examiner was changed to administrative law judge by rulemaking action of the Civil Service Commission. 5 CFR 930, 37 Fed. Reg. 16797, August 19, 1972.

The background and genesis of this case is revealed in the record by certain documentary evidence, testimony from a customs officer, and statements of record by the Coast Guard representative--an investigating officer. It appears that in the day before the first session of the hearing, August 7, 1969, appellant was discharged from the SS DE SOTO, a merchant vessel of the United States, on which he had served as a third assistant engineer, by authority of his license, for a voyage to the Far East lasting almost 3 months. While leaving the dock area after being paid off, he was subjected to a routine search of his person and belongings by U. S. Customs.³

More than 20 bottles of pills and powders were found in his baggage. When questioned about these substances, appellant gave evasive or meaningless answers⁴ and, pending their chemical analysis, was detained at the local customs office. He was released after 2-1/2 hours when the tests failed to disclose narcotics. Meanwhile, a "manuscript" and other personal papers, also found in appellant's baggage, aroused further suspicion among customs officers concerning his mental stability. These were turned over to the Coast Guard investigating officer.

Based on this information, and learning "by way of the Shipping Commissioner, San Francisco,"⁵3<`HL

³The customs officer performing the search testified that this was authorized as a "border search," required for all persons reentering this country after a foreign voyage. (Tr. 136).

⁴According to the customs officer, appellant stated that he "wasn't at liberty to tell...the contents,...had never been searched by customs [in] sailing since 1944,...that he was a robot...[and] didn't have the power to answer..." (Tr. 127-129).

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